

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE**

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**DANIEL T. WARREN,**

Plaintiff,

**AFFIDAVIT**

vs.

Index No.: I-2004-12768

**JOEL GIAMBRA**, as County Executive of the  
County of Erie, New York; and

**JOSEPH PASSAFIUME** as Director of the Erie  
County Division of Budget, Management &  
Finance, and

**NANCY NAPLES**, as Comptroller of the County  
of Erie, New York; and

**COUNTY LEGISLATURE, COUNTY OF  
ERIE, NEW YORK;** and

**KEVIN M. KELLEY**, as Clerk of the Legislature  
of the County of Erie, New York; and

**COUNTY OF ERIE, NEW YORK,**

Defendants.

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STATE OF NEW YORK     )  
COUNTY OF ERIE        )     SS.:

ANTHONY J. COLUCCI, III, being duly sworn, deposes and says:

1. I am a member of Colucci & Gallaher, P.C. I make this affidavit on personal knowledge in support of Respondents' opposition to Petitioner Warren's application for preliminary injunctive relief in the above-captioned proceeding.

2. My law firm maintains a suite of offices in downtown Buffalo, New York, in the Liberty Building.

3. On December 8, 2004, at about 5:40 p.m., County Executive Joel Giambra called me on my cellular telephone. Mr. Giambra asked me if he could use my firm's offices so that "some Republicans could talk to some Democrats" later that day.

4. I told Mr. Giambra that he was welcome to use my firm's offices. I asked him at what time and how many people I could expect. He told me no earlier than 6:15 p.m. and that the number, "including staff," would be ten people.

5. Given the hour, I ordered pizza to be delivered to my firm's offices.

6. Beginning sometime after 6:15 p.m., people arrived singly or in small groups at my firm's offices. By about 8:00 p.m., approximately twenty people, including the County Executive and members of his staff, had arrived at my firm's offices.

7. While I took no headcount, it is possible that eight or more members of the Erie County Legislature were in my law firm's suite of offices at the same time.

8. I can attest, however, that for much of the time that the members of the Erie County Legislature were present, they did not meet together in the same room.

9. I observed the Legislators, their staff members, County Executive Giambra and his staff dispersed in a variety of small groups and settings, including the reception area, two hallways, two conference rooms, a kitchen, a lunchroom and offices.

10. The small groups were not static; people moved about the offices, and many stopped in to the kitchen for dinner.

11. Many people left these small groups to make and receive cellular telephone calls. I was also aware that some people left the offices altogether and did not return.

12. Two members of the Legislature separately spent about a half-hour with me in my office.

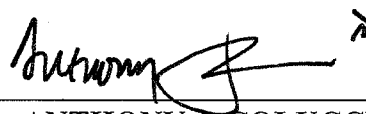
13. The various small groups of people did eventually sit together in a large conference room for a period of time that I estimate at under an hour.

14. At times, I heard loud voices coming from the conference room. The door was open, and people left at will to make and receive cellular telephone calls. From what I heard, it did not appear that any agreement was reached.

15. I heard Legislator Chase say loudly, "I'm out of here. I don't have to put up with this," or words to that effect. She got her coat and departed, sometime between 9:00 p.m. and 9:30 p.m.

16. I saw the County Executive and Legislator Swanick leave at about the same time that Legislator Chase departed, after which the other people departed, singly or in small groups.

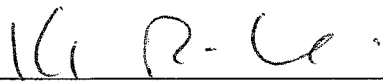
17. Legislator George Holt was the last to leave, at approximately 9:50 p.m.



ANTHONY J. COLUCCI, III

Sworn to before me this

5<sup>th</sup> day of January, 2005.



Notary Public

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KIMBERLY R. KRUCEK  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 6-1-07